



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2014-0495; FRL-9914-16-Region 9]

Revision of Air Quality Implementation Plan; Nevada; Clark County; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to fully approve permitting related rules submitted by Nevada as a revision to the Clark County Department of Air Quality (Clark or DEQ) portion of the state implementation plan (SIP) for the State of Nevada. These rules were adopted by DEQ to regulate the construction and modification of stationary sources of air pollution within Clark County. EPA is proposing to approve this SIP revision based on the Agency's conclusion that the rules are consistent with applicable Clean Air Act (CAA or Act) requirements, policies and guidance. Final approval of these rules would make the rules federally enforceable and correct program deficiencies identified in a previous EPA rulemaking.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit comments, identified by Docket ID Number EPA-R09-OAR-2014-0495, by one of the following methods:

1. *Federal eRulemaking Portal*: <http://www.regulations.gov>.

Follow the on-line instructions.

2. *E-mail*: R9airpermits@epa.gov

3. *Mail or deliver*: Gerardo Rios (AIR-3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. *Regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of

special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under EPA-R09-OAR-2014-0495. Generally, documents in the docket for this action are available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at www.regulations.gov, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, by phone: (415) 972-3534 or by email at yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. The State's Submittals

A. Which rules did the State submit?

On April 1, 2014, the Nevada Department of Environmental Protection (NDEP), on behalf of Clark County Department of Air Quality (Clark), submitted amended regulations and a request to remove several outdated regulations, to EPA for approval as revisions to the Clark County portion of the Nevada SIP under the CAA. These New Source Review (NSR) SIP revision submittals, referred to herein as the "NSR SIP submittal" or "submitted NSR rules," are intended to satisfy previously identified deficiencies to the requirements under both part C (prevention of significant deterioration) (PSD) and part D (nonattainment new source review) of title I of the Act as well as the general preconstruction review requirements for minor sources under section 110(a)(2)(C) of the Act. Please see our previous proposed and final rulemakings for a more detailed description of these rules and the permitting program in Clark County, Nevada. 77 FR 43206 (July 24, 2012); 77 FR 64039 (October 18, 2012).

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by Clark and submitted to EPA by NDEP, which is the governor's designee for Nevada SIP submittals.

Table 1 - Submitted NSR Rules

Section Number	Section Title	Adopted	Submitted
0	Definitions	3/18/14	4/1/14
12.0	Applicability, General Requirements and Transition Procedures	3/18/14	4/1/14
12.1	Permit Requirements for Minor Sources	3/18/14	4/1/14
12.2	Permit Requirements for Major Sources in Attainment Areas (Prevention of Significant Deterioration)	3/18/14	4/1/14
12.3	Permit Requirements for Major Sources in Nonattainment Areas	3/18/14	4/1/14
12.4	Authority to Construct Application and Permit Requirements For Part 70 Sources ¹	3/18/14	4/1/14
12.7 (Subsection 12.7.5)	Emission Reduction Credits	5/18/10	4/1/14

Table 2 -Rules Requested to Rescind

Section Number	Section Title	Repealed	Submitted
1	Definitions		
11	Ambient Air Quality Standards		
24	Sampling and Testing - Records		

¹ Section 12.4 also contains requirements to address the CAA title V requirements for operating permit programs, but we are not evaluating the rule for title V purposes at this time. We will evaluate Section 12.4 for compliance with the requirements of title V of the Act and EPA's implementing regulations in 40 CFR part 70 at a later date.

	and Reports		
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NDEP's SIP submittal includes evidence of public notice and adoption of these regulations. On May 5, 2014, Clark's April 1, 2014 submittal was determined by EPA to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. Our technical support document (TSD) provides additional background information on each of the submitted rules.

B. What are the existing Clark County rules governing stationary source permits in the Nevada SIP?

The existing SIP-approved NSR program for new or modified stationary sources in Clark County consists of one State regulation and seven Clark County regulations ("Sections") which EPA approved on September 7, 2004 and October 18, 2012, respectively. See 69 FR 54006 (final rule approving in whole or in part, Section 11 and Nevada Administrative Code (NAC) 445B.22083) and 77 FR 64039 (final rule partially approving and partially disapproving Sections 0, 12.0, 12.1, 12.2, 12.3 and 12.4). Collectively, these regulations establish the NSR requirements for both major and minor stationary sources under DAQ jurisdiction in Clark County.

Consistent with Clark's stated intent to have the submitted NSR rules replace existing SIP Sections 1 and 11, in their

entirety, EPA's approval of the regulations identified above in table 1 would have the effect of entirely superseding, or rescinding our prior approval of Sections 1 and 11. Section 1 contains outdated definitions that have been replaced by Section 0 and Section 11 is a rule that defines the term "ambient air quality standards" and provides definitions for terms used in that definition. The term "National Ambient Air Quality Standard" is now used throughout the Section 12 series of rules and is now defined in Section 0. Our proposed action would have no effect on NAC 445B.22083 which remains part of the applicable Nevada SIP.

C. What is the purpose of this proposed rule?

The purpose of this proposed rule is to present our evaluation under the CAA and EPA's regulations of the new and amended NSR rules submitted by DAQ on April 1, 2014, as identified in table 1. Clark amended these rules to correct program deficiencies identified by EPA on October 18, 2012 (77 FR 64039). We provide our reasoning in general terms below but provide more detailed analysis in our TSD, which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation

A. How is EPA evaluating the rules?

EPA has reviewed the rules submitted by Clark governing NSR for stationary sources under DAQ jurisdiction for compliance

with the CAA's general requirements for SIPs in CAA section 110(a)(2), EPA's regulations for stationary source permitting programs in 40 CFR part 51, sections 51.160 through 51.166, and the CAA requirements for SIP revisions in CAA section 110(l).² As described below, EPA is proposing approval of the submitted NSR rules.

B. Do the rules meet the evaluation criteria?

With respect to procedures, CAA sections 110(a) and 110(l) require that revisions to a SIP be adopted by the State after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart F. These requirements include publication of notices, by prominent advertisement in the relevant geographic area, of a public hearing on the proposed revisions, a public comment period of at least 30 days, and an opportunity for a public hearing.

Based on our review of the public process documentation included in the April 1, 2014 submittal, we find that Clark has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules to EPA.

² CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by States to EPA and prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

With respect to substantive requirements, we have evaluated each "Section" of the submitted NSR rules in accordance with the CAA and regulatory requirements that apply to: (1) General preconstruction review programs for minor sources under section 110(a)(2)(C) of the Act, (2) PSD permit programs under part C of title I of the Act, and (3) Nonattainment NSR permit programs under part D of title I of the Act. We are proposing to find that the submitted NSR rules satisfy the applicable requirements for these three permit programs and would strengthen the applicable SIP by correcting and updating the regulations. Final approval of these NSR rules would correct all deficiencies in Clark's permit programs identified in our October 18, 2012 final rule. See 77 FR 64039.

In addition, EPA notes that in 2012 it partially disapproved Nevada's infrastructure SIP (I-SIP) submittals for the 1997 ozone, 1997 PM_{2.5}, and 2006 PM_{2.5} NAAQS for several elements under section 110(a)(2) of the Clean Air Act. This included a partial disapproval for section 110(a)(2)(F)(iii), which requires the correlation of emissions reports and data collected under section 110(a)(2)(F)(ii) with any applicable emission limits or standards, and that such reports be made available for public inspection. See 77 FR 64737 (October 23, 2012). EPA finalized a similar disapproval with respect to Nevada's I-SIP submittal for the 2008 Pb NAAQS in 2014. See 79

FR 15697 (March 21, 2014). If finalized, today's action on Clark County rule Section 12.0 would cure the partial disapproval from EPA's 2012 and 2014 I-SIP actions and turn off the two-year FIP clock for CAA section 110(a)(2)(F)(iii), which expires on November 23, 2014. *Id.* The TSD for this action contains a more detailed discussion of our evaluation.

Section 110(l) prohibits EPA from approving a revision of a plan if the revision would "interfere with any applicable requirement concerning attainment and reasonable further progress. . . or any other applicable requirement of [the Act]."

We find that the SIP revision represents a strengthening of Clark County's minor NSR, PSD, and Nonattainment NSR programs compared to the existing SIP programs that we approved in 2012, and that our approval of the NSR SIP submittal would not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act.

For the reasons stated above and explained further in our TSD, we find that the submitted NSR rules satisfy the applicable CAA and regulatory requirements for minor NSR, PSD, and Nonattainment NSR permit programs under CAA section 110(a)(2)(C) and parts C and D of title I of the Act. Therefore, we are proposing a full approval of the submitted NSR rules listed in table 1 and rescission of the rules listed in table 2.

III. Public Comment and Proposed Action

Pursuant to section 110(k) of the CAA and for the reasons provided above and described more fully in the TSD for this rulemaking, EPA is proposing to fully approve the amended Clark County regulations listed in table 1, above, as a revision to the Clark County portion of the Nevada SIP. In addition EPA is proposing to rescind from the SIP the Clark County regulations listed in table 2, above. If finalized as proposed, the submitted rules will supersede the existing SIP rules that provide for permitting of new or modified stationary sources in Clark County, including all of existing SIP sections 1, 11 and 24.

We will accept comments from the public on this proposal for the next 30 days.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: June 19, 2014.

Jared Blumenfeld,
Regional Administrator,
Region IX.

Billing Code 6560-50-P

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